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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/492,173	01/27/2000	Hideki Ito	2298/3	9525
7590 KENYON & KENYON 1500 K STREET, N.W. SUITE 700 WASHINGTON, DC 20005-1257				
EXAMINER				
PATTERSON, MARC A				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
11/13/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/492,173

**Applicant(s)**

ITO ET AL.

**Examiner**

MARC A. PATTERSON

**Art Unit**

1794

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10/13/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7-10, 14, 15, 19, 20, 24, 25 and 29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-10, 14, 15, 19, 20, 24, 25 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-884)  
Paper No(s)/Mail Date 11/6/08
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

**NEW REJECTIONS**

***Claim Rejections – 35 USC § 102(b)***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 7 – 10, 15, 20 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Murakami et al (U.S. Patent No. 4,264,667) as evidenced by Fukuda et al (U.S. Patent No. 5,466,505).

With regard to Claims 7 - 10, 15, 20 and 25, Murakami et al disclose a polyester film (column 7, lines 59 - 60) comprising a non - elastomeric polyester and polyester elastomer (column 4, lines 52 - 54); the non - elastomeric polyester contained in the amount of 90 weight percent to 99.9 weight percent and the polyester elastomer contained in the amount of 0.01 weight percent to 10 weight percent (in a 99.4 : 0.6 ratio to 20 : 80 ratio by weight; column 4, lines 52 - 54); the non - elastomeric polyester comprises polyethylene terephthalate (terephthalic polyester; column 2, lines 51 – 60) and the elastomeric polyester comprises polyethylene terephthalate (column 4, lines 16 – 20); Murakami et al therefore disclose a composition identical to that of the claimed invention, as disclosed in the specification on page 15, lines 13 - 19, page 16, lines 7 - 11 and page 18, lines 10 - 20; the film is drawn at a temperature of 60 to 120 degrees Celsius at a draw ratio of 6 times (column 7, lines 31 - 41); Murakami et al do not disclose that the drawing temperature is greater than the glass transition temperature minus 5

degrees Celsius and less than the glass transition temperature plus 15 degrees Celsius, but Fukuda et al disclose that polyethylene terephthalate has a glass transition temperature of 73 degrees Celsius (column 5, lines 1 - 6); the drawing temperature of Murakami et al is therefore greater than the glass transition temperature minus 5 degrees Celsius and less than the glass transition temperature plus 15 degrees Celsius, and the draw ratio is greater than 3.5 times, as disclosed in the specification on page 25, lines 24 - 29); therefore, the claimed property of the film being heat shrinkable and having a shrinkage of 10% to about 40% along its main shrinkage direction in water of 70 degrees Celsius for 5 seconds and a shrinkage of about 50% or more along its main shrinkage direction in water of 95 degrees Celsius for 5 seconds and a shrinkage of about 10% or less along a direction perpendicular to its main shrinkage direction in water of 95 degrees Celsius for 5 seconds and an adhesive retention of about 99% or more after shrinkage and a haze of 3% to about 10% for a film thickness of 50 ~tm a shrinkage of about 15% to about 30% along its main shrinkage direction in water of 80 degrees Celsius for 5 seconds after a preform process and a preform finish defective percentage of about 1% or less are inherent to the film disclosed by Murakami et al.

***Claim Rejections – 35 USC § 103(a)***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 14, 19, 24 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murakami et al (U.S. Patent No. 4,264,667) in view of Yoshinaka et al (U.S. Patent No. 4,996,291).

Murakami et al disclose a heat shrinkable polyester film for making a label having a bonded portion as discussed above. With regard to Claims 14, 19, 24 and 29, Murakami et al fail to disclose a label which is a cap - sealing label. Yoshinaka et al teach that labeling and cap sealing are equivalent' as articles comprising a heat shrinkable polyester film (column 1, lines 15 - 32) for the purpose of making an article which attaches closely as a wrapping (column 1, lines 17 - 32). It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a label which is a cap - sealing label in Murakami et al in order to make an article which attaches closely as a wrapping as taught by Yoshinaka et al.

#### ANSWERS TO APPLICANT'S ARGUMENTS

5. Applicant's arguments regarding the 35 U.S.C. 102(b) rejection of Claims 7 - 10, 15, 20 and 25 as being anticipated by Murakami et al (U.S. Patent No. 4,264,667) as evidenced by Fukuda et al (U.S. Patent No. 5,466,505) and 35 U.S.C. 103(a) as being unpatentable over Murakami et al (U.S. Patent No. 4,264,667) in view of Yoshinaka et al (U.S. Patent No. 4,996,291), of record in the previous Action, have been considered and have been found to be persuasive. The portion of the rejection that references column 7, lines 54 - 55 has therefore been withdrawn. However, Applicant has not addressed the assertion in the rejection that the claimed properties are inherent to Murakami et al.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Marc A Patterson/  
Primary Examiner, Art Unit 1794